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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,879	09/23/2003	G. Steven Harris	3281	3610

7590

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EXAMINER

AMIRI, NAHID

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,879

Applicant(s)

HARRIS, G. STEVEN

Examiner

Nahid Amiri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 3, 6-9 and 11-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 23 September 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: exhibit.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to apparatus of a deck board fastening device for securing deck board, classified in class 403, subclass 403.
- II. Claims 11-15, drawn to a method fastening boards to a supporting structure, classified in class 52, subclass 381.

Inventions I and II are related as product and process of making/assembling for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method could be used to construct a platform for stage's outer door.

This application contains claims directed to the following patentably distinct species of the claimed invention: Group I, Figs. 1-9; Group 2, Fig. 10; Group 3, Fig. 11; Group 4, Figs. 12-15; Group 5, Figs. 16-20.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. D. A. N. Chase on July 26, 2005 a provisional election was made to group 1, Figs. 1-9 of apparatus claims 1-2, 4-5 and 10 without traverse to prosecute the invention apparatus of a deck board fastening device for securing deck board. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 6-9 and 11-15 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,402,415 B1 Eberle, III.

In regard to claim 1: Eberle discloses a fastening device for securing board, (Fig.1) comprising a top plate (3) including a first and a second flange (5 and 7) joined together along respective longitudinal edges, each of said flanges (5 and 7) extending outward in a substantially horizontal plane, the juncture of the flanges defining the longitudinal center of the top plate (3); a

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first compression element (15) extending from the top plate (3); and a second compression element (17), opposed to the first compression element (15), extending from the top plate (3), applicant does not define the compression members and what type of material made of, since the first and second elements (15 and 17) of Eberle's device press and compress force at the joint of board members, therefore, examiner considers them as compression members.

Claims 1, 2, 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,385,929 B1 Englehart.

In regard to claim 1: Englehart discloses an interlocking log-like system (Fig.1) having a top plate (50) including a first and a second flange (F and F') (see attachment) joined together along respective longitudinal edges, each of said flanges (F and F') extending outward in a substantially horizontal plane, the juncture of the flanges defining the longitudinal center of the top plate (50); a first compression element (C) (see attachment) extending from the top plate (50); and a second compression element (C') (see attachment), opposed to the first compression element (C), extending from the top plate (50). Applicant does not define the compression members and what type of material made of, and since the first and second elements (C and C') of Englehart press and compress force against the adjacent log members therefore, examiner considers them as compression members.

In regard to claim 2: Englehart discloses an interlocking log-like system (Fig.1) the compression elements (C and C') extend from corresponding tabs (T and T') (see attachment) located at the longitudinal ends of the top plate (50).

In regard to claim 4: Englehart discloses an interlocking log-like system (Fig.1) having at least one compression members (C) project upward from the top surface (52) of the top plate (50), and at least of the compression members (C') project downward from the bottom surface of the top plate (50).

In regard to claim 10: Englehart discloses an interlocking log-like system (Fig.1) having a top plate (50) including a first and a second flange (F and F') (see attachment) joined together along respective longitudinal edges, each of said flanges (F and F') extending outward in a substantially horizontal plane, the juncture of the flanges defining the longitudinal center of the

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top plate (50), the top plate (50) having a first end (E) (see attachment) and longitudinally opposed second end (E') (see attachment); a hole (64) extending through at the center of the top plate (50); a first tab (T) extending from the top plate (50) from in proximity to the first End (E); a second tab (T') extending from the top plate (50) in proximity to the second end (E'); the first compression element (C) projecting from the first tab (T); and a second compression element (C') projecting from the second tab (T').

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,557, 219 Edwards.

In regard to claims 1 and 5: Edward discloses an elastomeric biscuit (10) (Figs. 2 and 3) (column 3, lines 49-58) having a top plate (14) including a first and a second flange joined together along respective longitudinal edges, each of the flanges extending outward in a substantially horizontal plane, the juncture of the flanges defining the longitudinal center of the top plate (14); a first compression element (11) extending from the top plate (14); and a second compression element (12) opposed to the first compression element (C) extending from the top plate (52), and compression elements (11 and 12) including outwardly diverging prongs (11a, 11b, 12a and 12b).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 4,557,219	Edward
US Patent No. 6,634,077 B2	Layfield
US Patent No. 5,529,428	Bischof
US Patent No. 6,851,884 B2	Eberle
US Patent No. 6,854,221 B1	Michaels
US Patent No. 698,722	Heilmann
US Patent No. D485,160 S	Pelc

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US Patent NO. 5,368,426 Beeves

US Patent No. 6,129,053 Markham et al.


US Patent No.Des.384,271 Kozyrski

US Patent No. 5,193,931 Arato

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (571) 272-8113. The examiner can normally be reached on 8:30-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nahid Amiri
Examiner
Art Unit 3679
August 03, 2005


Primary Examiner
Art Unit 3679

